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90-1051

Supreme Court, U.S.
FILED
DEC 27 1990
JOSEPH F. SPANIOL, JR.
CLERK

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1990

CAPTAIN J.P. TRISTANI, et al,

Petitioners,

Vs.

EASTERN AIR LINES, INC. et al,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1.

Whether the post-petition status of the claims underlying this case require a core designation pursuant to 28 U.S.C. §157 even though the claims could exist independent of the Chapter 11 bankruptcy proceedings and are based solely on state law and on federal statutes other than the bankruptcy statute.

2.

Whether parties are entitled to a jury trial in an Article III court when their claims are based on a tort injury and a breach of contract arising from state law and upon the Federal RICO Statute (Chapter 18 U.S.C.) and upon 1983 Discrimination Statute (42 U.S.C. §1983), all of which are independent of the Chapter 11 Bankruptcy Statute (Chapter 11 U.S.C.).

3.

Whether Eastern Air Lines should be required to fund the unfunded $281,540,000 of the pilots pension plan guaranteed by the Pension Benefits Guaranty Corporation.

4.

Whether Eleventh Circuit and/or Atlanta District Court has the authority to order the New York District Court to hear the appeal and/or try this case.

TABLE OF CONTENTS

	Page
1. Questions Presented For Review	i-ii
2. Table of Authorities	iv
3. Reference to Other Opinions In Case	2
4. Grounds on Which Jurisdiction is Envoked	2
5. Date of Entry of Judgment of the Eleventh Circuit	2
6. Statutory Jurisdiction	2
7. Statement of Case	3 - 8
8. Opinion of the Eleventh Circuit Sought To Be Reviewed	A-1
9. Order of U.S. District Court for the Northern District of Georgia, Atlanta Division	A-4

The U.S. District Court for the Southern District of New York has issued no orders as of December 26, 1990.

TABLE OF AUTHORITIES

	Page
CASES	
In Re Ben Cooper, Inc., et al vs. The Insurance Co. of the State of Pennsylvania, et al, 869 F2d 1394	7
Granfianciera, S.A., et al v. Nordberg, Creditor Trustee For The Estate of Chase & Sanborn Corp., fka, General Coffee Corp., (Case No. 87-1616) 109 Supreme Court 2782 (June 23, 1989)	8
The Insurance Company of the State of Pennsylvania and Kerwick & Curran, Inc. vs. Ben Cooper, Inc., Case No. 89-1784	8
In Re Kaiser Steel Corp., No. 90-1013 (10th Cir. Aug 10, 1990) 911 F2d 380, p.389	7
In Re United Missouri Bank of Kansas City, n.a., 901 F2d 1449 (8th Cir. 1990)	7
STATUTES	
18 U.S.C. §1961 and 1962	3, 6

28 U.S.C. §1254 (11)	2
28 U.S.C. 1332	6
42 U.S.C. §1983	3, 6

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

The opinion of the United States Court of Appeals for the

Eleventh Circuit, which is set forth in the Appendix, vacated all of the Orders issued by the U.S. District Court for the Northern District of Georgia, Atlanta Division. Both opinions are unreported. (In response to Rule 14(d) of this Court.)

The grounds on which jurisdiction of this Court is envoked are the divergents of opinions of the 2nd, 8th, 10th and 11th Circuits. (Rule 14 (e).

The date of the entry of the judgment of the Eleventh Circuit is November 20, 1990. (Rule 14 (e) (i)).

The jurisdiction of this Court to review the order of the U.S. Court of Appeals for the Eleventh Circuit is envoked under 28 U.S.C. §1254(11). Rule 14 (e) (iv)).

STATEMENT OF CASE

The Petitioners (hereinafter "Tristani") alleged causes of action based upon:

(a) A personal injury tort (the intentional infliction of mental distress);

(b) Breach of a contract between Tristani and Eastern;

(c) Racketeering activity under Federal RICO Statute;

(d) Violation of Section 1983 Discrimination Statute;

(e) Violation of fiduciary duties regarding the pilots pension plans. The original complaint sought damages arising out of all causes of action and demanded a jury trial.

Eastern filed an Adversary Proceeding in its Chapter 11 Bankruptcy case in the New York Bankruptcy Court. The Bankruptcy Court envoked the automatic stay provision under 11 U.S.C. 157 and issued an injunction against further prosecution of the complaint in the Atlanta District Court.

Responding to an order of the Atlanta District Court, Eastern filed a moton to dismiss with brief; Tristani filed a brief; and the District Court granted the motion to dismiss on August 31, 1990. Tristani filed a notice of appeal to the Eleventh Circuit and a request to expedite which was granted. Oral argument before the Eleventh Circuit was on November 14, 1990 and the Eleventh

Circuit issued its opinion on November 20, 1990 by which it ordered the case transferred to the U.S. District Court for the Southern District of New York.

On December 3, 1990 Tristani filed a timely motion for rehearing, which is pending. Tristani filed this petition for Certiorari in December, 1990.

Tristani sought monetary damages, resulting from all alleged causes of action, against Eastern Air Lines, Inc., Texas Air Corporation, Jet Capital Corporation and Frank Lorenzo. Tristani also sought judgment against Eastern, Texas Air, Jet Capital and Lorenzo for the unfunded portion of the Pilot's Pension Plans, known as the A Plan and B Plan in the total amount of $283,540,000. Eastern

deducted from the payroll of Tristani as much as 10% of each payroll check for the purpose of depositing said deduction in the pension plan as Tristani's contribution to that Pension Plan. However Eastern converted these deductions and used them for operating expenses and never deposited Tristani's money in the Plans. Tristani's deductions are part of the $283,540,000.

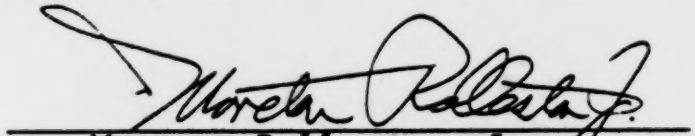
The District Court had jurisdiction of this action under 18 U.S.C. §1961 (1) (B), and §1962 (a), (b), (c) and (d) (RICO); 42 U.S.C. §1983 (Deprivation of Rights); 28 U.S.C. §1331 (Federal Question); 45 U.S.C., sub-chapter I (Railway Labor Act) and 28 U.S.C. §1332 (Diversity of Citizenship).

(Rule 14 (i)).

This writ should be allowed because the divergence of opinions in various circuits on whether or not a Bankruptcy Court can conduct a jury trial. The Eighth and Tenth Circuits have held that Bankruptcy Courts can not conduct jury trials, even in core proceedings. See In re United Missouri Bank of Kansas City, n.a. 901 F2d 1449 (8th Cir.1990). In re Kaiser Steel Corp., No. 90-1013 (10th Cir.Aug 10,1990) 911 F2d 380, p. 389 The Second Circuit held just the opposite, that is, that a Bankruptcy Court could conduct a jury trial in a core proceeding. See In re Ben Cooper, Inc., et al vs. The Insurance Co. of the State of Pennsylvania, et al, 896 F2d 1394.

This Court granted certiorari to the Second Circuit and on November 13, 1990 remanded the case to the Second Circuit to determine jurisdiction. See The Insurance Company of the State of Pennsylvania and Kerwick & Curran, Inc. , v. Ben Cooper, Inc., Case No. 89-1784.

The Eleventh Circuit agreed with the Second Circuit that a Bankruptcy Court could conduct a jury trial but on June 23, 1989 this Court reversed the Eleventh Circuit in Granfianciera, S.A. et al v. Nordberg, Creditor Trustee For The Estate of Chase & Sanborn Corp., fka, General Coffee Corp. (Case No. 87-1616) 109 Supreme Court 2782 (June 23, 1989).



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APPENDIX

IN THE

UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No.90-8901

D.C. Docket No. 1:90-cv-318-JTC

CAPTAIN J.P. TRISTANI, et al,

Plaintiffs-Appellants,

versus

EASTERN AIR LINES, INC., et al,

Defendants-Appellees.

Appeals from the United States District Court
for the Northern District of Georgia

(November 20, 1990)

Before TJOFLAT, Chief Judge, DUBINA, Circuit Judge, and Peck*, Senior Circuit Judge.

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*Honorable John W. Peck, Senior U.S. Circuit Judge for the 6th Circuit, sitting by designation.

PER CURIAM:

The issues in this case are presently being litigated in the United States District Court for the Southern District of New York in a Chapter 11 bankruptcy proceeding involving Eastern Air Lines, Inc. The court below, acting on its own initiative, should have transferred this case to that court pursuant to 28 U.S.C. §1404 (a), since the interest of justice and the convenience of the parties require that the case be disposed of in that forum. Accordingly, we vacate the district court's final judgment, and, as well, all orders entered in the case subsequent to the filing of appellants' complaint, and direct the district corut, on receipt of our mandate--which we direct the clerk to issue instanter, to transfer this case to the United

States District Court for the

Southern District of New York.

IT IS SO ORDERED.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

Captain J.P. Tristani, et al, Plaintiffs,	:	Civil Action File No. 1:90-CV-319-JTC
vs.	:	
Eastern Air Lines, Inc. et al, Defendants.	:	

ORDER

This matter is before the Court on Defendants' Motion to Dismiss; plaintiffs' Motion to certify the case as a class action; plaintiffs' Motion for Default Judgment; Plaintiffs, Motion for Partial Summary Judgment; and defendants' Motion to Extend the Time to Answer the Motion by Plaintiff for Partial Summary Judgment. For the following reasons, defendants' Motion to Dismiss is GRANTED; Plaintiffs' Motion to Certify a Class Action is MOOT; Plaintiffs' Motion for a Default Judgment is MOOT;

Plaintiffs' Motion for Partial Summary Judgment is MOOT; Defendants' Motion to Extend the Time to Answer the Motion by plaintiff for Partial Summary Jdugment is MOOT.

I. BACKGROUND

This action arises from a strike by Eastern Air Lines Pilots and the subsequent bankruptcy of Eastern Airlines. Plaintffs were employed as pilots for Eastern Airlines. Plaintiffs assert five causes of action against defendants.

First, plaintiffs assert a breach of contract action, based upon the collective bargaining agreement between the Air Line Pilots Association ("ALPA") and Eastern Air Lines. Under this contract, plaintiffs contend they

had the right to perform pilot services for Eastern until age 60.

Second, plaintiffs assert a tort action, based on intentional infliction of emotional distress for Eastern's alleged deliberate intention to inflict injury upon the plaintffs by refusing to accept the pilots back for employment after the strike.

Third, plaintiffs allege Eastern violated the Federal RICO stature, 18 U.S.C. §664, §1961, §1962 and §1341, by converting money from the "B Plan" (a pension plan that contained pay dedictions from these plaintiffs) to use for operations.

Fourth, plaintiffs allege Eastern violated 42 U.S.C. §1983 by discriminating against plaintiffs

because of their union membership in rehiring decisions following the sympathy strike.

Finally, plaintiffs contend Eastern breached its fiduciary duty as trustee of the pension plan by converting deducted payroll funds to its own use, thereby deliberately underfunding the B Plan.

On March 9, 1990, defendants filed a voluntary petition for relief under Chapter 11, Title 11 of the Bankruptcy Code. Since that time, Eastern has continued to operate its business and property as debtors-in -possession pursuant to §§1107(a) and 1108 of the Code. On February 12, 1990 plaintiffs filed this action. On March 14, 1990, the Honorable

Burton R. Lifland, Chief Bankruptcy Judge, issued an order finding that this action violated the automatic stay provision of 11 U.S.C. §362(a)(1), (3), and (6). Therefore, the bankruptcy court issued an injunction under Section 105 of the Code, which specifically enjoined plaintiffs from prosecuting this lawsuit or any other legal action, other than an action before that bankruptcy court.

In particular, Judge Lifland deferred ruling on whether the inclusion of the bid procedure issue violates the automatic stay, but nonetheless enjoined plaintiffs from proceeding in the instant lawsuit on this claim because the ALPA Adversary Proceeding was to address this same issue. Eastern Air Lines v. Rolleston,

No. 90-5591A, slip op. at 18 (S.D. N.Y.,Mar.14, 1990)(Memorandum Decision on Motion for Determination of Automatic Stay Violated and for a Section 105 Injunction). Second, the court found that plaintiffs' claims regarding Eastern's alleged underfunding of the pension plan was a contingency and was untimely. Id. The Court found that plaintiffs' RICO, §1983 and RLA claims were attempts to control the assets of the bankrupt estate and therefore violated the automatic stay. Id. at 19-20. Next, the co urt found that the instant lawsuit interferes with essential core matters before the b ankruptcy court and interfers with Eastern's reorganization attempts. Id. at 22. Finally, the

court stated that "plaintiffs are merely asserting unliquidated, contingent pre-petition claims..." Id. at 21. Thus, the court concluded that the entire lawsuit now pending before this Court must be enjoined. Id. at 28.

Defendants contend that because the present action was filed in violation of the automatic stay provisions of Chapter 11, that the action is void and should be dismissed. Plaintiffs, on the other hand, assert that these causes of action are post-petition, are non-core proceedings, are based on the common law, and in any event, should not be dismisse, but instead should be stayed until the completion of the bankruptcy proceeding.

The Court will consider dismissal of the action under Fed. R.

Civ. P. 12 (b) (1) and (6), for lack of subject matter jurisdiction, and for failure to state a claim upon which relief can be granted.

II. FAILURE TO STATE A CLAIM

First, the Court will address whether defendants are entitled to relief on the basis that plaintiff has failed to state a claim. This circuit follows the rule that any acts in violation of an automatic stay under Chapter 11, Title 11 §362, are void and without effect. Kalb v. Feuerstein, 308 U.S. 433, 433 (1940); In Re Albany Partners, Ltd., 749 F.2d 670, 675 (11th Circuit 1984); Borg-Warner Acceptance Corp v. Hall, 685 F.2d 1306, 1308 (11th Cir. 1982). Thus, the first issue to be addressed is whether the automatic stay was

violated.

In Borg-Warner, the court stated that a violation of the automatic stay would occur if the plaintiff attempted to exercise self-help, repossession, or detinue under state court proceedings. 685 F2d at 1308. Further, in InRe State Airlines, 873 F2d 264 (11thCir.1989), where an airline plaintiff filed for bankruptcy under Chapter 11 of the Code, thereupon triggering the automatic stay provision, and the defendant filed suit against the airline in District Court the following day, the Court concluded that "the initiation of [the] lawsuit against the debtor [was] prohibited by the automatic stay." 873 F2d 264, 265 n.1 (11th Cir.1989).

Applying these rules to the present case results in a like

conclusion. Plaintiffs filed this suit after the automatic stay took effect. Thus, the suit would be a violation of the automatic stay provision of the Code, unless it was outside the parameters of that provision.

To determine the scope of the automatic stay provision, consideration must be given to the Order of the Bankruptcy court, which previously decided this question. This Court agrees with the reasoning and conclusions of the bankruptcy court regarding the applicability of the automatic stay to the current actions. Furthermore, because the bankruptcy court already litigated and determined that the instant case falls within the scope of the

automatic stay, that issue is foreclosed from relitigation by principles of res judicata. I.A. Durbin, Inc. v. Jefferson Nat'l Bank, 793 F2d 1541, 1549 (11th Cir. 1986). The fact that the decision has been appealed does not affect the applicability of res judicata principles. Fidelity standard Life Ins. Co. vs. First Nat'l Bank & Trust Co., 510 F.2d 272, 273 (5th Cir.), cert.denied, 423 U.S. 864 (1975).

Thus, both the actions of instituting and continuing this lawsuit are in violation of the automatic stay. As such, the Court finds this suit void and without effect. In Re Albany Partlenrs, 749 F2d at 675. Because this action is void and is thus a nullity, and because any action of this Court in the perpetration of this lawsuit

would therefore also be void and without effect, this Court must dismiss this action.

Plaintiff argues that the automatic stay should, at the most, only temporarily stay the proceedings in this Court. The Court, however, finds this proposition to be incorrect.

As a general rule, courts may only stay proceedings that were properly brought in the first instance. For example, in Ellison v. Northwest Eng'g Co. 707 F2d 1310, 1310 (11th Cir. 1983), the district court granted defendant's motionf or summary judgment. After that decision, the parties appealed. Before or al argument, but after appellate briefs had been filed, the appellee filed bankruptcy under Chapter 11. The Court found that since the automatic

stay had gone into effect when the bankruptcy petition was filed, the court was prohibited from issuing an opinion until that matter was resolved, and thus stayed the proceedings in its court until that time. Id. See also Association of St. Croix Condo. Owners v. St. Croix Hotel, 682 F. 2d 446 (3d Cir. 1982) (During appeal from eviction order, party files bankruptcy, causing the court to stay proceedings before it in accordance with the automatic stay provision of Section 362.); Breaux v. Boution, 182 So. 2d 168, 170 (Ct.App.La 1966) (previously instituted action is not terminated by bankruptcy proceeding).

These cases are distinguishable from the present action because in the cases relied upon by the Court, the suit that

was stayed until the termination of the bankruptcy proceeding was instituted before the automatic stay took effect. The facts of the case ar bar differ regarding the relation of the order and timing of the civil suit to the automatic stay. Accordingly, this Court rejects plaintiffs' proposition that the proper course to follow is to stay the proceedings until the conclusion of the bankruptcy action.

III. LACK OF JURISDICTION

The next issue to be addressed is whether plaintiffs' commencement of this action, and the continuation of the action after the bankruptcy court's order regarding the automatic stay and the subsequent injunction as to these plaintiffs, should be dismissed for lack of jurisdiction. Plaintiffs argue that these claims are beyond the jurisdiction of the

bankruptcy court because they are non-core proceedings, post-petition action, common-law actions, or actions directed at funds not owned by Eastern. However, this Court finds that plaintiffs' argumetn is not only unpersuasive, but is also foreclosed by the Order of Judge Lifland and the subsequent Order of this Court, dated August 31, 1990, both of which concluded that the claims of plaintiff fell under the umbrella of protection of the automatic stay. I.A. Durbin, 793 F2d at 1549.

The Bankruptcy court has exclusive jurisdiction over competing claims to proeprty alleged to belong to the debtor. In Re Brown, 22 B.R. 844,850 (N.D.N.Y. 1982). Because the court previously determined that this suit is attempting to claim assets alleged

to belong to the bankrupt estate, this principle applies, causing exclusive jurisdiction over the proceeding to vest in the bankruptcy court.

Similarly, in Guardian Mtg. Investors v. Unofficial Noteholders, 607 F 2d 1020, 1024 (2d Cir. 1979), the court held that an action brought by the debtor against the committee in the district court, charging the committee with violations of the Securities Exchange Act of 1934, was within the exclusive jurisdiction of the bankruptcy court. Id. Consequently, the district court dismissed the complaint for lack of jurisdiction, noting how this principle was equally applicable where a party sues the debtor with danger of frustrating the debtor's reorganization efforts. Id.

The same reasoning applies to the case at bar. The bankruptcy court has exclusive jurisdiction over the assets of Eastern's estate, for the reasons asserted by Judge Lifland, which included the danger of frustrating Eastern's reorganization effort with the continuation of this lawsuit and the attempts through this lawsuit to freeze millions of dollars of Eastern's bankruptcy estate. Additionally, this Court finds that the claims of plaintiffs are within the scope of the automatic Stay. Accordingly the Court finds itself without jurisdiction to hear the present action. For this reason, the Court must dismiss plaintiffs pending action.

Because the Court is dismissing this action pursuant to Fed. R.

Civ. P. 12(b)(1) and (6), the dismissal is with prejudice. Additionally, because the Court dismisses this action, all other motions currently pending before this Court in this case are moot.

For the fore going reasons, this court GRANTS defendants' Motion to Dismiss with prejudice. Consequently, plaintiffs' Motion to certify as a Class Action, plaintffs' Motion to Enter Default Judgment, plaintiffs' Motion for Partial Summary Judgment, and defendants' Motion To Extend Time for Answer are all MOOT.

SO ORDERED, this 31st day of August, 1990.

/s/ Jack T. Camp

JACK T. CAMP
UNITED STATES DISTRICT JUDGE

Entered on Docket September 6,1990.